

RECEIVED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

DEC 04 2014

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

JAMES N. MATTHEW, Clerk  
By: *Derek L. McSmith*  
*Derek L. McSmith*

DOC

DEREK LEROY MCSMITH,

CIVIL ACTION NO:

On behalf of himself and on behalf of

all others similarly situated.

Plaintiff,

1:14-CV-3857

v

LABOR READY SOUTHEAST, INC.

Defendant

CLASS COMPLAINT

---

COMES NOW plaintiff, DEREK LEROY MCSMITH, (hereafter collectively the "Plaintiff") on behalf of himself and all similary situated individuals, pro se, and for his complaint against Defendant, states as follows:

PRELIMINARY STATEMENT

I

Defendant operates as a temporary employment agency and send employees on daily assignments. Defendant provides the temporary employee upon completion of the assignment with compensation in the form of a check or having the funds posted on a global cash debit card.

II

Defendant has in place a standard policy for all contracts negotiated with a client via Labor Ready which requires a minimum of four hours paid to an employee if the employee works less than 4 hours on any assignment at the agreed upon hourly rate.

III

Defendant has violated the provisions of the Fair Labor Standards Act and the provision of the 4 hour minimum as it relates to plaintiff and situated individuals who have worked with plaintiff as listed on the applicable work tickets.

IV

As shown by exhibit one plaintiff worked less than 4 hours and received the 4 hour minimum on 9-18-2014.

V

On 9-18-2014 plaintiff worked for a second client less than 4 hours and received compensation based upon the 4 hour minimum requirement. See exhibit one.

VI

As it relates to the 9-5-2014 date showing 4 hours plaintiff needs to initiate discovery in order to view the work ticket to validate the actual hours worked. Exhibit one.

VII

The entry date of 9-4-2014 showing 3 hours does not reflect hours worked.

VIII

As shown by exhibit 2 plaintiff worked less than 4 hours and did not receive the  
4 hour minimum.

IX

As shown by exhibit 3 plaintiff worked less than 4 hours and did not receive the  
4 hour minimum.

X

On the assignments pertaining to exhibits 2 & 3 plaintiff worked with more than  
15 employees of defendant who worked less than 4 hours and did not receive the  
4 hour minimum.

XI

Based on the foregoing violations, Plaintiff asserts claims against Defendant  
on behalf of himself and a class of Defendant's employees and prospective employees.

XII

On behalf of himself and the Putative Class, Plaintiff seeks statutory damages, costs  
and attorneys' fees, equitable relief and other appropriate relief pursuant to the Fair  
Labor Standards Act.

JURISDICTION

This Court has federal question jurisdiction over Plaintiff's Fair Labor Standards  
Act claims. Defendant is located in Atlanta, GA, in this district and division.

THE PARTIES

XIV

**Individual and representative Plaintiff, Derek Leroy McSmith is an employee of defendant and a member of the Putative Class.**

XV

**Labor Ready Southeast is based in and maintains its principal place of business in Atlanta, GA and is governed by the record keeping provisions of the Fair Labor Standards Act.**

XVI

**Numerosity:** Plaintiff became aware that defendant was not providing the 4 hour minimum to employees who worked less than 4 hours in September of 2014 thus the Putative Class is numerous.

XVII

**Typicality:** Plaintiff's claims are typical of the members of the Putative Class.

XVIII

**Adequacy:** Plaintiff will fairly and adequately protect the interests of the Putative class by petitioning the court for court appointed counsel pursuant to U.S.C. 1915.

XIX

**Commonality:** Common questions of law and fact exist as to all members of the Putative Class and predominate over any questions solely affecting individual members of the Putative Class, including but not limited to:

- a. Whether Defendant violated the Fair Labor Standards Act willfully
- b. The proper measure of statutory damages.

XX

This case is maintainable as a class action under Fed. R. Civ. P 23(b)(2) because Defendant has acted on grounds that apply generally to the Putative Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

XXI

Class certification is also appropriate under Fed. R. Civ. P. 23 (b)(3) because questions of law and fact common to the Putative Class predominate over any questions affecting only individual members of the Putative Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct described in this complaint stems from established and uniform policies and practices resulting in common violations of the Fair Labor Standards Act. Members of the Putative Class do not have an interest in pursuing separate actions against Defendant, as the amount of each Class member's individual claims is small compared to the expense and burden of individual prosecution and Plaintiff is unaware of any similar claims brought against Defendant by any members of the Putative Class on an individual basis. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendant's practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Putative Class members' claims in a single forum.

XXII

Plaintiff intends to send notice to all members of the Putative Class to the extent required by Rule 23. The names and addresses of the Putative Class members are available from Defendant's records.

COUNT ONE: FIRST CLAIM FOR RELIEF

Failure to provide employees minimum wage hours pursuant to the 4 hours minimum requirement in violation of the Fair Labor Standards Act

XXIII

Plaintiff states and incorporates by reference the statements in the preceding paragraphs.

XXIV

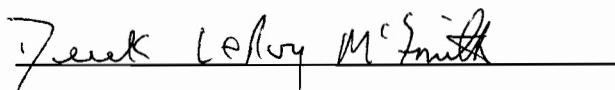
Defendant violated the provisions of the Fair Labor Standards Act by not providing plaintiff and similarly situated employees with minimum wage hours due them via the standard 4 hour minimum payment requirement. Whether Defendant has maintained precise records will be discovered thru discovery.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Putative Class, prays for relief as follows: 1. Determination that this action may proceed as a class action under Rule 23(b)(2) &(3) of the Federal Rule of Civil Procedure; 2. Designating plaintiff as class representative and designating plaintiff's counsel as counsel for the Putative Class; 3. Issuing proper notice to the Putative Class at Defendant's expense; 4. Declaring that Defendant committed multiple, separate violations of the Fair Labor Standards Act;

5. Declaring that Defendant acted willfully in deliberate or reckless disregard of plaintiff's and class member rights and its obligations under the Fair Labor Standards Act; 6. Award statutory damages as provided by the Fair Labor Standards Act; 7. Award punitive damages as provided by the Fair Labor Standards Act; 8. Award reasonable attorney's fees and costs as provided by the Fair Labor Standards Act; 9. The difference in pay not provided to plaintiff and those similarly situated current and former employees who worked on work tickets under 4 hours but did not receive the 4 hour minimum payment requirement; 10. Granting other and further relief, in law or equity, as this Court may deem appropriate and just & 11. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff and the Putative Class demand a trial by jury.

DEREK LEROY MCSMITH, on his own behalf and  
on behalf of those similarly situated



Derek Leroy McSmith

6852 Tara Oaks Drive

Riverdale, GA 30274

470 725 8535

lry\_z@yahoo.com

### Worker Work History

Dispatch Date	Job Order #	Work Ticket #	Customer Name	Hours	PaymentStatus
09/18/2014	001244059	1018964-3219	Raja Varahabhatla	4.00	Issued
09/18/2014	001242536	1018973-3219	Tony Brewer & Company Inc	4.00	Issued
09/17/2014	001235700	1018869-3219	RHB Enterprises	8.00	Issued
09/06/2014	001224339	1018342-3219	WME Live Ent	5.75	Issued
09/06/2014	001224339	1018345-3219	WME Live Ent	0.00	Unissued
09/05/2014	001224339	1018274-3219	WME Live Ent	5.75	Issued
09/05/2014	001224673	1018344-3219	WME Live Ent	4.00	Issued
09/04/2014	001224673	1018173-3219	WME Live Ent	3.00	Issued
09/04/2014	001224673	1018173-3219	WME Live Ent	5.50	Issued
08/28/2014	001214667	1017786-3219	SPIRIT HALLOWEEN SUPE	7.50	Issued
08/22/2014	001180213	1017465-3219	BURLINGTON MATTRESS	7.00	Issued

Exhibit A

LABOR READY SOUTHEAST INC	1015 "A" ST TACOMA WA 98402	Telephone : 1-877-733-0430
Issued By : 120983	Advice Date : 10/22/2014	Advice Number: 8075587147
Payee: MCSMITH,DEREK,L	Social Security No: XXX-XX-9451	
Gross Pay : \$21.75	Net Pay : \$20.08	Pay Period: 10/22/2014 to 10/22/2014

---

THIS PERIOD EARNINGS	THIS PERIOD TAXES	THIS PERIOD DEDUCTIONS
----------------------	-------------------	------------------------

Regular	\$21.75	MED EE	\$0.32
TOTAL EARNINGS	\$21.75	SOC SEC EE	\$1.35
		TOTAL TAXES	\$1.67

---

## HOURS BY JOB ASSIGNMENT

Customer	Primary Address	Phone	Rate	Reg	OT	DT
ADESA AUCTIONS	5055 OAKLEY INDUSTRIAL BOULEVARD, FAIRBURN, GA, 30213	770-357-2007	\$7.25	3.00	0.00	0.00
	<b>TOTAL HOURS</b>			<b>3.00</b>	<b>0.00</b>	<b>0.00</b>

YTD EARNINGS : \$3148.80

YTD HOURS : 412.85

THANK YOU FOR WORKING WITH LABOR READY (WWW.LABORREADY.COM). PLEASE VERIFY YOUR HOURS.

## ATTENTION:

YOUR PAYMENT HAS BEEN MADE TO YOUR PAYCARD AND IS FUNDED IMMEDIATELY. THERE ARE MANY WAYS TO USE YOUR PAYCARD WITH NO FEES - VISIT YOUR NEAREST BANK TO RECEIVE 100% OF YOUR BALANCE, CASH YOUR G-CHECK FOR FREE AT WALMART, OR RECEIVE CASH BACK WHEN YOU USE THE CARD AT LOCAL STORES. SEE YOUR PAYCARD TERMS AND CONDITIONS FOR MORE INFO. IF YOU LOSE YOUR CARD, PLEASE RETURN TO YOUR NEAREST LABOR READY BRANCH TO RECEIVE A REPLACEMENT CARD FOR FREE.

This document is not a check. Ask the branch employees for the nearest location to use your paycard for free or for the toll free Global Cash Card customer service line to learn more about how to use your paycard.

If you prefer to receive your payment in a different form, ask branch employees for details of available payment methods.

MCSMITH,DEREK,L  
6852 TARA OAKS DRIVE  
RIVERDALE

Exhibit 2

SYS KEY: 1335SYS10/22/14 4:32:37 PM

GA 30274

AMOUNT DEPOSITED \$20.08

LABOR READY SOUTHEAST INC

1015 "A" ST TACOMA WA 98402

Telephone : 1-877-733-0430

Issued By : 120983

Advice Date :

10/1/2014

Advice Number:

8075219495

Payee: MCSMITH,DEREK,L

Social Security No:

XXX-XX-9451

Gross Pay : \$21.75

Net Pay :

\$20.08

Pay Period:

10/1/2014 to 10/1/2014

**THIS PERIOD EARNINGS****THIS PERIOD TAXES****THIS PERIOD DEDUCTIONS**

Regular	\$21.75	MED EE	\$0.32
<b>TOTAL EARNINGS</b>	<b>\$21.75</b>	SOC SEC EE	\$1.35
		<b>TOTAL TAXES</b>	<b>\$1.67</b>

**HOURS BY JOB ASSIGNMENT**

<b>Customer</b>	<b>Primary Address</b>	<b>Phone</b>	<b>Rate</b>	<b>Reg</b>	<b>OT</b>	<b>DT</b>
ADESA AUCTIONS	5055 OAKLEY INDUSTRIAL BOULEVARD, FAIRBURN, GA, 30213	770-357-2007	\$7.25	3.00	0.00	0.00
	<b>TOTAL HOURS</b>			<b>3.00</b>	<b>0.00</b>	<b>0.00</b>

YTD EARNINGS : \$3108.30

YTD HOURS : 407.35

THANK YOU FOR WORKING WITH LABOR READY (WWW.LABORREADY.COM). PLEASE VERIFY YOUR HOURS.

## ATTENTION:

YOUR PAYMENT HAS BEEN MADE TO YOUR PAYCARD AND IS FUNDED IMMEDIATELY. THERE ARE MANY WAYS TO USE YOUR PAYCARD WITH NO FEES - VISIT YOUR NEAREST BANK TO RECEIVE 100% OF YOUR BALANCE, CASH YOUR G-CHECK FOR FREE AT WALMART, OR RECEIVE CASH BACK WHEN YOU USE THE CARD AT LOCAL STORES. SEE YOUR PAYCARD TERMS AND CONDITIONS FOR MORE INFO. IF YOU LOSE YOUR CARD, PLEASE RETURN TO YOUR NEAREST LABOR READY BRANCH TO RECEIVE A REPLACEMENT CARD FOR FREE.

This document is not a check. Ask the branch employees for the nearest location to use your paycard for free or for the toll free Global Cash Card customer service line to learn more about how to use your paycard.

If you prefer to receive your payment in a different form, ask branch employees for details of available payment methods.

MCSMITH,DEREK,L  
6852 TARA OAKS DRIVE

RIVERDALE

GA 30274

SYS KEY: 1335SYS10/01/14 4:53:06 PM

Exhibit 3

**AMOUNT DEPOSITED** \$20.08